

Internal Revenue Service
memorandum

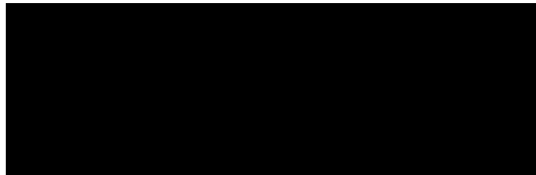
date: APR 25 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-316-91
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated [REDACTED], from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] Inc. is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

08626

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

RECEIVED

SEP 12-6 PM 12:10

BUREAU OF LAW

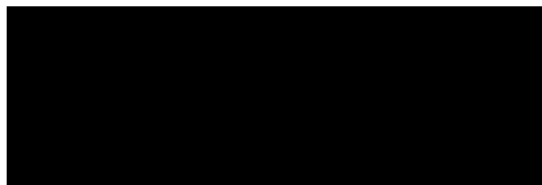
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

FEB 26 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

Steven A. Bartholow

Steven A. Bartholow
Deputy General Counsel

Enclosure

0284B

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

MEMORANDUM

FEB 11 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in reply to your request for my opinion as to the status of [REDACTED], as an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts (RRA and RUIA). The status of this company has not previously been considered.

The [REDACTED] ([REDACTED]), formed on [REDACTED], as a [REDACTED] corporation headquartered in [REDACTED], engages in the purchase and sale of farm commodities. [REDACTED] owns two rail carriers which have been determined to be employers under the Acts: the [REDACTED] ([REDACTED]), with service creditable from [REDACTED]; and the [REDACTED] ([REDACTED]), with service creditable from [REDACTED]. [REDACTED] acquired control of [REDACTED] in [REDACTED] and it obtained control of [REDACTED] at the time of [REDACTED]'s formation in [REDACTED]. The total revenue from both railroads constituted less than one percent of [REDACTED] revenue in [REDACTED], and less than [REDACTED] percent in [REDACTED].

[REDACTED] states that the [REDACTED] employees of [REDACTED] manage and operate both [REDACTED] and the [REDACTED]. [REDACTED] full time and [REDACTED] part time [REDACTED] employees assist and in so doing are supervised by the [REDACTED] employees in track repair on a seasonal basis, and [REDACTED] pays [REDACTED] a nominal fee for [REDACTED]'s payroll supervisor to handle [REDACTED]'s payroll. [REDACTED] states that these services for its railroad subsidiaries constitute [REDACTED] percent of its total staff time.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which

Director of Research and Employment Accounts

operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

Section 1(a) of the RUIA contains a substantially similar provision.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines a company under common control with a carrier as one controlled by the same person or persons which control a rail carrier. The Board has determined that a parent company may be under common control with its subsidiaries within the terms of this provision. See Appeal of Itel Corporation, Board Order 82-140, reversed on other grounds, Itel Corporation v. United States Railroad Retirement Board, 710 F. 2d 1243 (7th Cir. 1983).

Section 202.7 of the regulations (20 CFR 202.7) further defines a service as in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations. Finally, section 202.6 (20 CFR 202.6) provides that a service which is insubstantial is casual service under the Acts.

There is no evidence that [REDACTED] conducts any rail carrier operations; hence [REDACTED] is not an employer under section 1(a)(1)(i). [REDACTED] does own a controlling interest in the [REDACTED] and [REDACTED], both rail carrier employers covered under the Acts. [REDACTED] is therefore under common control with its rail carrier subsidiaries. However, while maintenance of railroad right of way and payroll administration may be considered services in connection with transportation of property by rail, the minimal proportion of [REDACTED] staff time devoted to these activities and the insignificant proportion of [REDACTED]'s revenue generated by them clearly falls within the definition of casual service under the Board's regulations.

Based on the foregoing, it is therefore my opinion that [REDACTED], is not a covered employer under the Acts. A form G-215 giving effect to this determination is attached.



Steven A. Bartholow

Attachment

K13

KTBlank:KTB:aam

02930/C. 3039-90